

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2742 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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GURUBIMRAO LAXMANRAO DESAI

Versus

SUPERINTENDING ENGINEER  
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Appearance:

MR PC KAVINA for Petitioner  
MR RJ OZA for Respondent No. 1  
M/S PATEL ADVOCATES for Respondent No. 2  
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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 11/04/2000

ORAL JUDGEMENT

Present writ petition has been filed by the  
petitioner Shri. Gurubimrao Laxmanrao Desai, a  
Stenographer, Grade-II, working in the adhoc  
establishment of Superintending Engineer, Irrigation

Mechanical Circle-II, New Mental Hospital Compound, Meghaninagar, the respondent no.1, and in the pay scale of Rs.475-800, by office order dated 18-4-1980. Since the appointment, petitioner is discharging his duty in the respondent department. While continuing on the post, the petitioner received a confidential letter dated 5-3-1990 (Annexure-A) from Executive Engineer, Ukai Mechanical Circle, Ahmedabad, wherein it has been stated that the post of the petitioner can be filled up on the recommendation of the Gujarat Public Service Commission and since his appointment has not been made on the recommendation of the Gujarat Public Service Commission, he will be discharged from Government Service with effect from 5-4-1990. Having felt aggrieved by the aforesaid order/notice dated 5-3-1990 of the Executive engineer, the petitioner has filed the present writ petition for quashing the aforesaid order and also for regularising his services in the post of Stenographer, Grade-II with effect from the date of his appointment.

2. After filing the writ petition, the petitioner moved for an interim order and this Court by order dated 12-4-1990 stayed the operation of the order dated 5-3-1990 at Annexure-B. In pursuance of the aforesaid interim order passed by this Court the petitioner is still continuing in his post.

3. Mr. P.C. Kavina, learned counsel appearing on behalf of the petitioner submitted that, the petitioner was appointed on the post of Stenographer, Grade-II by order of the Executive Engineer dated 18-4-1980 and after receipt of the appointment order he joined in the post and from 1980 till today he is continuing in his post of Stenographer, Grade-II in the office of Respondent No.1. Learned counsel submitted that before issuing the notice dated 5-3-1990 at Annexure-B the petitioner was never informed that he is required to be appointed through Gujarat Public Service Commission, and he was under the impression that his appointment is a temporary appointment and in due course he will be confirmed in his post. It is also alleged by learned counsel for the petitioner that during this long period of ten years he has not even intimated to appear before the Public Service Commission and to get his selection confirmed. Learned counsel also submitted that, after getting the notice dated 5-3-1990 he immediately moved this Court and obtained a stay order on 12-4-1990, and in pursuance of the interim order of this Court the petitioner is still continuing. Learned counsel for the petitioner submitted that, though the petitioner has been appointed initially

in the adhoc establishment in the office of respondent no.1, the said adhoc establishment is still continuing. Learned counsel for the petitioner submitted that in view of the fact that the petitioner is continuing in the post for more than 20 years, it is obligatory on the part of the respondents to regularise the service from the date of his initial appointment.

4. Learned AGP Ms. B.R. Gajjar, appearing for Learned Govt. Solicitor submitted that the post of Stenographer Grade-II, which the petitioner is holding, falls within the jurisdiction of the Gujarat Public Service Commission and unless a person is recommended by Gujarat Public Service Commission (GPSC) his appointment can not be said to be regular in nature and he has not acquired any right by rendering 20 years service in the department. Learned AGP consequently submitted that since the petitioner has not acquired any right by his appointment in the establishment there is no illegality in the notice dated 5-3-1990 issued by the Executive Engineer to discharge the petitioner from government service.

5. It is true when the Recruitment Rules prescribes any definite method for recruitment for the post then appointment in such post only be made in accordance with the provisions of the Recruitment Rules. It is admitted that the post of Stenographer, Grade-II which the petitioner is holding, regular appointment only be made after the candidate is selected by GPSC. In the instant case the petitioner has not been appointed through GPSC, and therefore I am of the view that by rendering 20 years of service he has not acquired any right to the post. However it appears that in accordance with the order passed by the respondent, the petitioner continue in the post of Stenographer, Grade-II for last ten years and he is continuing in the post for another ten years in pursuance of the interim order passed by this Court on 12-4-90. Therefore it appears that the petitioner is serving in the post of Stenographer Grade-II from last 20 years, and it would be unreasonable to throw the petitioner out without giving him any scope to get his selection through GPSC. Learned counsel for the petitioner very fairly submitted that since the petitioner has already served for more than 20 years he may be given an opportunity to appear before the Public Service Commission to get him selected on regular basis. Learned counsel also submitted that, in the event the petitioner fails to qualify in the examination conducted by GPSC, then, he will not object to the termination from the post of Stenographer, Grade-II. Learned counsel for

the petitioner also submitted that, in view of the peculiar situation he is not pressing for regularisation in service of the petitioner. Learned counsel for the petitioner further submitted that the petitioner should be given atleast one opportunity to prove his merit and get his selection in accordance with the Recruitment Rules through the GPSC.

6. The submissions being made by learned counsel for the petitioner appears to be reasonable, because I am also of the view that a person who has served in the post for twenty years should not be straightway throw out from service and an opportunity should be given to him to get his selection through the GPSC. If he is selected by the GPSC for the post which he is holding, then, it is well and good and if he fails to qualify to get his selection through GPSC, he will make way for regularly selected candidate for the post. Accordingly, I am of the view that the notice issued by Executive Engineer dated 5-3-1990 should be quashed for the time being. Accordingly the aforesaid letter/notice dated 5-3-1990 at Annexure-B is herereby quahsed. The petitioner is directed to appear in the next examination to be conducted by the GPSC for recruitment to the post of Stenographer, Grade-II. If the GPSC recommends the petitioner for the post of Stenographer, Grade-II, then, the respondent Government shall appoint him to he post of Stenographer, Grade-II, on regular post. However if the petitioner fails to qualify in the GPSC examination , or he is not recommended by the GPSC for appointment to the post of Stenographer, Grade-II, then, he will make way for appointment of regularly selected candidate, and in that event the respondent Government will be at liberty to discharge the petitioner from his post, after giving one month's notice. The respondent No.1 is directed to intimate the petitioner about the next examination to be conducted by GPSC for appointment to the post of Stenographer, Grade-II, and the petitioner will act accordingly. With the aforesaid observations and directions this writ petition is disposed of. Rule discharged. However the ad interim relief granted earlier to continue till the petitioner is either selected or discharged from the post of Stenographer, Grade-II, in accordance with aforesaid directions. I make no order as to costs.

DT: 11-4-2000

( P.K. Sarkar, J )

/vgn.

